THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.13497 of 2006

ORDER:

With the consent of both parties, the Writ Petition is disposed of at the admission stage itself.

This writ petition is filed seeking a Mandamus declaring the action of the first respondent in issuing proceedings No.Nil dated 28.6.2006 as arbitrary, illegal, without jurisdiction and consequently to set aside the same.

The petitioner is a registered society under the Societies Registration Act vide Registration No.284/90 dated 28.12.1990. The society used to run a Polytechnic College, which is approved by the All India Council for Technical Education, New Delhi and also by the Government of Andhra Pradesh. Originally, there were 12 members in the Executive Body who were running the society apart from members of minority community. Some other members were also included as there was urgent necessity for running the society since the minority community members are not well versed in bringing up educational institution, therefore, it was decided to admit non-minority members also in the society. Hence, the second respondent was admitted as member into the society. While the matter stood thus, the second respondent had inducted members of his choice and started mismanaging the affairs of the petitioner society by misusing the college and society's funds at his whims and fancies. Though several meetings were conducted, none of the members inducted by the second respondent had attended the meeting. It is also not known whether such persons are there or not. The members of the society particularly minority community members i.e. Muslims have unanimously resolved to run the society by themselves and requested

all the non-minority members including the second respondent to quit from the society by giving resignation to the management. Since, there was no response from the second respondent, the society was constrained to call for a general body meeting. In the said general body meeting, it was unanimously resolved to remove the second respondent from the post of Secretary-cum-Correspondent as per the bye-laws of the society and to appoint one of the member who belongs to minority community as Secretary-cum-Correspondent to run the society as well as the college. Accordingly, a resolution was passed on 22.3.2006 by appointing new members who belongs to minority community as per the byelaws of the society and requested the first respondent to record the same. Later, a general body meeting of the society was convened on 5.4.2006 at Al-Huda Polytechnic college, Nellore under the Presidentship of Syed Akram Mohiuddin Ahmed, the founder President and resolved to remove the members who were inducted by the second respondent and further elected new executive committee members. In the said meeting, the new executive committee was formed to run the petitioner society by appointing Mohd.Ahmed Basha as General Secretary-cum-Correspondent along with other office bearers, viz. President, Vice President, Secretary etc. Accordingly, the above developments were informed to the first respondent and requested to change the membership by adding the new members in the registers concerned and the same was accepted. Accordingly changes were effected with effect from 21.4.2006 and the same was also informed to the second respondent. It seems the second respondent has raised a dispute before first respondent with regard to admission of new members and also election of new executive body and removing him from the post of Secretary-cum-Correspondent. Accordingly, a notice was issued to the Society vide

letter No.E1/Nil/2006 dated 9.6.2006. After considering the material placed before it, the first respondent however, discredited the resolutions passed by the society by the impugned order. Aggrieved by the same, the present writ petition is filed.

The learned counsel for petitioner states that the first respondent has no authority under law particularly under Section 8 of the A.P. Societies Registration Act, 2001 (for short 'the Act') to take up any such dispute on his own and decide the same on merits. If there is any dispute between the members of the society, the only course open is to invoke Section 23 of the Act, but not otherwise. Therefore, the impugned order is without jurisdiction. Further, the authority cannot review its own order, which attained finality on 21.4.2006.

Per contra, the learned counsel appearing for respondent No.2 Sri V.Sudhakar Reddy strenuously contended that neither the general body meeting as required under the bye-laws of the society was called for by issuing notice to the members nor there was any quorum for conducting meeting as required under the bye-laws. It was only the petitioner and another themselves assumed the jurisdiction of the general body and passed a resolution and sent the same to the first respondent. Therefore, the second respondent filed a detailed report objecting for induction of other members. The first respondent has rightly called for the records and when the petitioner failed to produce any records, the impugned order was passed, which is neither said to be illegal, nor arbitrary and does not call for any interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made on either side and perused the material made available on record including the byelaws of the society.

There is no necessity of going into all the details.

Whether any notices were issued calling for general body meeting and whether they were served or not and where the general body meeting was conducted and what is the resolution passed are all missing and nothing has been reflected in the writ petition.

Insofar as the power of the first respondent is concerned, Section 8 of A.P. Societies Registration Act, 2001 reads as under:

Amendment of memorandum and Bye-laws:

(1) By a "Special Resolution" a society may alter the provisions of the memorandum with respect to,

(a) change of objectives of the society;
(b) to amalgamate itself with any other society; or
(c) to divide itself into two or more societies.

(2) Subject to the provisions of this Act, and the conditions contained in its memorandum, a society may, by an ordinary resolution passed by not less than ½ (half) of the members present and voting alter its bye-laws.

(3) Any alteration of the memorandum of the society shall not be valid unless such alteration is registered under this Act.

(4) If any alteration of the memorandum is filed with the Registrar and if they are not contrary to the provisions of this Act, he shall register the same and shall certify the registration of such alteration under his hand and seal within thirty days from the date of receipt of the resolution. The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the certification thereof have been complied with and henceforth the memorandum as so altered shall be the memorandum of the society.

(5) Every alteration in the bye-laws of the society should be sent to the Registrar and he shall take it on record if it is not contrary to the provisions of this Act.

Clause (4) of the said Section categorically indicates that if any

alteration of the memorandum is filed with the Registrar and if they are not contrary to the provisions of this Act, he shall register the same and shall certify the registration of such alteration under his hand and seal within thirty days from the date of receipt of the resolution. The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the certification thereof have been complied with and henceforth the memorandum as so altered shall be the memorandum of the society. In the process of examining the acts of contrariness of the purported resolution sent by the petitioner on the complaint received from the second respondent, the first respondent examined the matter in detail. Even before the first respondent, the petitioner did not produce any material to support its case. Under those circumstances, the impugned order passed by the first respondent cannot be said to be either arbitrary or illegal. However, learned counsel for the petitioner stated that the petitioner is ready to produce such evidence as required under law relating to the general body meetings conducted by the society.

In view of the above, I am of the opinion that ends of justice would be met by affording one more opportunity to the parties enabling them to put forth their case before the first respondent.

Accordingly, the impugned order is set aside and the matter is remanded back to the first respondent. The parties are at liberty to produce the evidence both oral and documentary before the first respondent within two weeks and the first respondent shall examine the same afresh and pass appropriate orders after hearing the parties concerned, within a period of two months from the date of receipt of a copy of this order. Till such time, status quo, as on today, shall be maintained.

The writ petition is allowed to the extent indicated above. There

shall be no order as to costs.

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C.V.RAMULU, J

Date: 11.7.2006

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.13497 of 2006

11.7.2006

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.13497 of 2006

Dated: 11th July, 2006

Between:

Khan Abdul Gaffar Khan Memorial
Educational Society, rep. by its
Founder President Syed Akram Mohiuddin Ahmed.
.. Petitioner

and

The District Registrar of Societies,
Nellore, Nellore district & another.
.. Respondents